

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

NOTICE OF MOTION NO. 269 OF 2002

IN

SUIT NO. 3278 OF 1991

Champagauri Karsanbhai Patel .. Plaintiff

versus

Govindbhai Bhagwanbhai Patel & ors .. Defendants

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Mr.K.H.Mody i/b Mr.S.Pathak for Plaintiff.

Mr.D.J.Khambatta, Mr.A.S. Doctor i/b D.Munim &

Co for Defendant no.2

Ms A.Castellino i/b Hariani & Co for Defendant no.3

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CORAM : D.G. KARNIK, J

DATED : 24th February, 2005.

P.C:-

1. Heard learned counsel for the plaintiff and the defendant nos.2 and 3. None present for defendant no.1.

2. The dispute in this suit relates to 1100 shares

(hereinafter referred to as suit shares) in the share capital of the defendant no.3 company. The suit shares originally belonged to one Karsandas Patel, the husband of the plaintiff no.1 and father of plaintiff nos. 2 and 3. The suit shares have been transferred in the name of the defendant no.2 and the plaintiffs allege that the said transfer is fraudulent and illegal. The plaintiffs applied for appointment of a receiver in respect of the suit shares and accordingly by an order dated 7th October, 1991 passed in Notice of Motion No.2374 of 1991, a receiver was appointed in respect of the suit shares. The appointment of the receiver was confirmed by an order dated 23rd June, 1992. The receiver has since then been collecting the dividends of the suit shares declared by the defendant no.3 company. The plaintiffs have now prayed that the dividend which has been collected by the receiver along with interest accrued thereon be paid over to the plaintiffs.

3. By filing an affidavit in reply dated 16th December, 2004 the defendant no.2 who is a registered holder of the suit shares has recorded his no objection for payment of dividend to the plaintiffs subject to their furnishing of adequate security. In

view of this conciliation made by the defendant no.2, I am inclined to allow the motion conditionally. In my view, it is necessary to protect the interest of the defendant no.2 who is the registered holder by asking the plaintiffs to furnish security for withdrawal of the dividends. Hence, I pass the following order :

" Motion is made absolute in terms of prayer clause (a) subject to the plaintiffs furnishing of security for repayment of the dividends and interest to be withdrawn in the event the plaintiffs fail in the suit. This order shall also govern future dividends which may be received by the receiver subject to further security. Security to be furnished to the satisfaction of the Prothonotary and Senior Master at the time of each withdrawal of the amount."

. Motion is disposed of.

. All concerned to act on an authenticated copy of the order attested by the Court Associate.

D.G.KARNIK, J